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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,758	12/09/2003	Timothy P. Clare	18,856	6550
23556 7590 05/17/2007 KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			EXAMINER POLLICOFF, STEVEN B	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 05/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

SP

Office Action Summary

Application No.

10/732,758

Applicant(s)

CLARE ET AL.

Examiner

Steven B. Pollicoff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 7, 21 and 34-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-20, 22-33, 38-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3,11,¹²19,20,22,29,30-32 and 38-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Seno et al., (US Pat 6953118).

With respect to claims 1-3,11,19,20,22,29 and 38-40, Seno discloses a corrugated board (Seno column 5, line 45) package of flexible articles (Seno Fig 3) capable of being stacked vertically upon and beneath other such packages, the package comprising: a plurality of flexible articles/lateral stack of flexible articles having folded edges (Fig 5a and b at ref 450); a structural insert/package insert partially surrounding the flexible articles (Fig 3 ref 220 and Fig 6c generally), the insert comprising a base and two opposed side walls (Fig 3 at ref 220 generally) extending from the base to define a generally U-shaped channel for receiving the flexible articles, each side wall extending from the base to an upper edge (Fig 6a at ref 520) spaced from the base defining an undulating pattern; a flexible outer covering (Fig 3 ref 210 and 240) containing the insert and the flexible articles; and wherein each side wall of the insert includes a plurality of cut-outs (Fig 6a see cutouts adjacent ref 520) extending into

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the wall from the upper edge thereof to form a plurality of identical evenly spaced-apart adjacent support ribs, and wherein the folded edges of the flexible articles are substantially flush with the upper edges of the structural insert (Fig 6c generally at ref 430) and each flexible article is in communication with at least one other flexible article within the generally U-shaped channel (Fig 3 at ref 230).

With respect to claim 12, Seno discloses that the flexible articles are contained within at least one package of articles (column 6, lines 57-59).

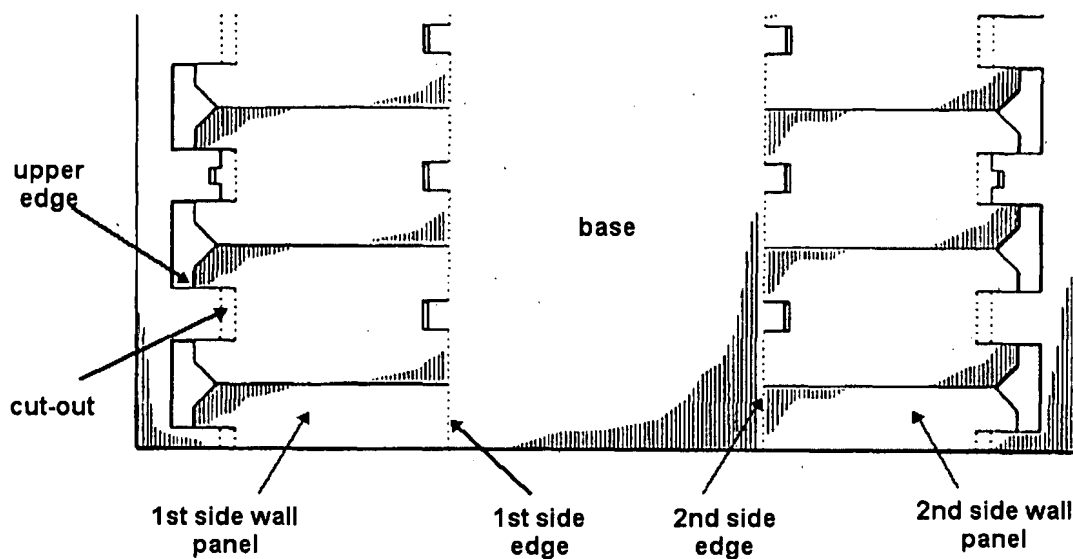


Fig 9c Seno US Pat '118.

With respect to claim 30,31 and 32, Seno discloses a blank for forming a package insert (Fig 9c above) comprising: a base panel including a first side edge and a second side edge; a first side wall panel joined to the first side edge, the first side wall panel comprising an upper edge spaced from the first side edge, and at least one cut-

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out extending into the first side wall panel from the upper edge thereof, wherein the at least one-cut out is rectangular in shape; a second side wall panel joined to the second side edge, the second side wall panel comprising an upper edge spaced from the second side edge of the base panel; and wherein the blank is configured to form an insert (Fig 3 ref 220) wherein each side wall of the insert includes a plurality of cut-outs extending into the wall from the upper edge thereof to form a plurality of identical evenly spaced-apart adjacent support ribs, such that the insert is configured to receive a stack of flexible articles (Fig 6c) within the channel of the insert and is further capable of being stacked vertically upon and beneath other such package inserts.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4-6,8-10,13-17,23-28,33 and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seno '118.

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With respect to claims 4-6,23-25 and 41-43, it would have been an obvious matter of design choice to make the support ribs rectangular, triangular or truncated triangular since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47.

With respect to claims 8-10,26-28 and 33, while Seno does not disclose that the plurality of cut-outs is greater than about 10,20 or 30 percent of the total area of the insert, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the insert to find an optimal minimum range of material that reduces material use yet maintains insert stability, since it has been held that where general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

With respect to claims 13-17, while Seno does not disclose that the flexible articles are disposable absorbent articles, training pants, diapers or feminine care products, it would have been an obvious matter of design choice to place a variety of laterally stacked goods in an insert to be packaged for transportation and/or storage since applicant has not disclosed that by particularly packing absorbent articles this way solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the flexible package of goods presented in Seno.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seno '118 in view of Hobbs (US Pat 3,650,395).

With respect to claim 18, Seno does not disclose a flexible outer covering containing the insert and the flexible articles. However, Hobbs discloses a polymer film outer covering (Hobbs Fig 3 ref 12) compression wrapped around an insert (11) and flexible articles (see the bottles) to hold the articles securely in the insert. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the package of Kelly to include a flexible outer covering/shrink wrap for the insert, as taught by Hobbs, for the purpose of tightly and firmly hold the articles and insert together (column 2, lines 65-70).

Response to Arguments

Applicant's arguments with respect to claims 1-43 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CBP
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